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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

FILE [redacted] Office: CALIFORNIA SERVICE CENTER Date: AUG 20 2003

IN RE: Applicant: [redacted]

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B).

ON BEHALF OF APPLICANT:

[redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Application for Permission to Reapply for Admission into the United States after Deportation or Removal (I-212 application) was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 30-year old native and citizen of Guatemala. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(9) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9) for having been ordered removed from the United States. The applicant seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), in order to live with his lawful permanent resident wife and United States citizen daughter.

Based upon the documentation submitted with the application and Bureau records, the director concluded that the applicant was deported from the United States under section 235(b)(i) or section 241(a) of the Act on July 1, 1999 and that the applicant reentered the United States without permission or inspection on or about January 2001.

On appeal, counsel for the petitioner argues that the director erred as a matter of law in finding that an August 1996 order of deportation may be reinstated and that the director abused his discretion in denying the I-212 application. Counsel also indicated that she would submit a brief and or additional documentation within thirty days of the appeal. More than eleven months have lapsed since the date of the appeal and nothing more has been submitted to the record.

Counsel's arguments are not persuasive.

The record reflects that the applicant was ordered deported on January 8, 1996. The applicant's wife stated at her July 7, 1999 adjudication interview that her husband self-deported on July 4, 1999. The applicant submitted a bank statement dated January 2001 from a United States bank listing him on the account and a California birth certificate for his daughter showing the daughter's date of birth as January 4, 2002. This evidence suggests that the applicant reentered the United States without inspection, but in review it is not conclusive proof that he reentered illegally.

The applicant also submitted a bank statement from a Guatemalan bank indicating that he made four deposits in January 2001. This suggests that he remained outside this country. Nonetheless, the applicant failed to meet his burden of proof. The evidence indicates that the applicant

departed the United States on July 4, 1999 and returned to the United States unlawfully in early 2001. Therefore, he is inadmissible under section 212(a)(9)(C)(i)(II) of the Act, and must remain outside the United States for at least 10 years before the Bureau will consider his application for permission to reapply.

Further, section 241(a)(5) of the Act, 8 U.S.C § 1231(a)(5), provides that:

> If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this Act, and the alien shall be removed under the prior order at any time after reentry.

The applicant unlawfully reentered the United States after April 1, 1997, the effective date of section 241(a)(5), and is subject to the provisions of section 241(a)(5) of the Act. Therefore, he is not eligible for any relief under this Act and the appeal will be dismissed.

ORDER: The appeal will be dismissed.